

IN THE SUPREME COURT OF BELIZE A.D. 2021

Claim No 75 of 2021

BETWEEN:

(SILK GRASS FARMS LIMITED

CLAIMANT

AND

(FRESHWATER CREEK FARMS LIMITED

DEFENDANT

BEFORE THE HONORABLE JUSTICE LISA M. SHOMAN

Hearing Date: 13th December, 2021.

Appearances:

Mr. E Andrew Marshalleck SC & Mr. Jaraad Ysaguirre for the Claimant

Ms. Magalie Perdomo for the Defendant

Written Submissions:

Claimant

10th December, 2021.

23rd December, 2021.

10th January, 2022.

Defendant

10th December, 2021.

23rd December, 2021.

2nd February, 2022.

DECISION ON PRELIMINARY ISSUE

BACKGROUND

1. In 2018, Fruit Processors Limited (“Fruit Processors”) and Citrus and Cattle Limited (“Citrus and Cattle”) agreed with Freshwater Creek Farms Limited (“Freshwater”) for sale of certain lots, pieces or parcels of land identified as that part of Citrus and Cattle property situated south of Freshwater Creek, Stann Creek District, Belize, subject to an authenticated survey and subdivision to be done by Dangriga Land Developers Limited. This was by a written contract dated June 9, 2018 (“the Postema contract”).
2. The Postema Contract provided at Clause 1(a) that:

“The Seller has agreed to sell and the Buyer has agreed to buy the aforementioned property (hereinafter referred to as “the Property”) on the basis of “as is and where” for the sum of One Thousand Dollars in Belize currency per acre, the number to identified in the authenticated survey noted above, and the Buyers have further agreed to organize, follow through with and pay for the survey and subdivision of two parcels of Citrus and Cattle Limited land to quantify the size of the Property.”
3. The Postema Contract also provided at Clause 1(e) that:

“The Buyer upon signing this Agreement and making payment of 50% of the estimated purchase price may enter on, take possession of and begin using said Property.”
4. Freshwater paid the agreed first payment towards the purchase price of \$55,000.00 Belize Dollars under the Postema Contract and Freshwater took possession of the property and has since 2018, Freshwater claims to have developed the property and expended significant sums on planting, clearing and working the land. Freshwater is in possession and occupation of the Property.

5. At the time that the Postema Contract was made, there was no subdivision approval for the subdivision of the land which the parties agreed to sell, and to buy. The parties were aware (as Clause 1(a) above shows¹) that the Buyer needed to “organize, follow through with and pay for the subdivision of two parcels of Citrus and Cattle Ltd. land.” No date by which the subdivision had to be done was stipulated. The Contract was not expressed to be subject to the subdivision approvals as a condition for sale and purchase. The Postema Contract was not registered, and no stamp duty was paid.

6. In 2019, Silkgrass Farms Limited (“Silkgrass”), agreed with Citrus and Cattle Limited, Fruit Processors Limited and Clarisse Pollack (together called the "Sellers") that: ***"Subject to all necessary regulatory approvals being duly had and obtained, the Sellers will sell and the Buyers will buy the properties for the purchase price upon the terms and conditions hereinafter set forth subject to the Postema Contract but otherwise free from encumbrances."*** This was by a written agreement dated March 25, 2019 (“the Silk Grass agreement”). The Buyers were the Claimant and Silk Grass Enterprises Limited.

7. On the same date - March 25, 2019 - a Deed of conveyance was registered pursuant to the Silk Grass Agreement as instrument LTU201900435 and states as follows:

"The Vendor is (under and by virtue of the documents of title listed in the First Schedule hereto), seized of the properties described in the Second Schedule hereto for estates in fee simple free from encumbrances save for an executory contract for the sale of a portion thereof comprising approximately 121 acres of land which sale the Claimant is, subject to completion of all agreed terms and conditions set forth in written agreement (the Silk Grass Agreement) for sale between the Vendor and the Purchaser of even date herewith, committed to complete."

¹ “ *the Buyers have further agreed to organize, follow through with and pay for the survey and subdivision of two parcels of Citrus and Cattle Limited land to quantify the size of the Property.* ”

8. The Silk Grass Agreement states at Clause 2 that:

“2.1. The Buyer shall in accordance with the instructions of the Sellers and subject to all necessary regulatory approvals including in particular final subdivision approval from the Land Utilization Authority being duly had and obtained within a reasonable time, (such time being fixed by agreement at one year from the date of execution of these presents) convey legal title to the lands subject to the Postema Contract in accordance with the terms of the said contract on completion of the sale and purchase therein provided for.”

“2.2. “The Sellers acknowledge that the Postema Contract is subject to final subdivision approvals being granted by the Land Utilization Authority and agree that in the event that the necessary final subdivision approvals are not duly had and obtained within the stipulated time period, the Sellers shall take such steps as are necessary to cancel or terminate the Postema Contract and shall be responsible for making any and all payments or refunds required by the Postema Contract or in any way touching and concerning the same arising from the termination or cancellation and the Buyer shall thereafter hold the Properties free from the contract.”

9. The Defendant Freshwater who was a party to the Postema Contract says that the Silk Grass Agreement was never brought to its attention, and yet, that latter Agreement purported to set a 1-year limitation on completion of the Buyer under the Postema Contract of the requisite surveys and subdivisions needed for the 121 acres of property that it was occupying.

10. Freshwater is not a party to the Silk Grass Agreement and there is no existing contract between Silkgrass and Freshwater.

11. Provisional Approval to subdivide an 88.6 acre parcel owned by Citrus and Cattle in order to facilitate one portion of the sale of the 121 acres under the Postema Contract was granted on 28 January 2019, subject to the issuance of an

Authenticated Survey Plan and approval of access roads by the Ministry of Works. The Survey Plan was then authenticated by the Mapping Section under the authority of the Commissioner of Lands and Surveys in September 2020.

12. By a letter dated September 23rd, 2020, the Commissioner of Lands advised Freshwater of the reason for delaying the second and final approval. The Commissioner explained that the approval to subdivide could not even be considered since the property in question was subject to the Deed of Conveyance between the Claimant and the Sellers – under the Silk Grass Agreement.
13. On November 10th, 2020 the Claimant notified the Defendant of its trespass on the Claimant's Land and advised the Defendant that if the trespass continued the Claimant would be forced to take legal action against the Defendant.
14. The Defendant in response, via letter dated the 16th November, 2020 stated that it was authorized to enter, take possession of and begin using the Lots of land and maintains a right to remain upon the Lots under and by virtue of the Postema Contract.

THE PRELIMINARY ISSUE TO BE DETERMINED

15. By Order dated July 2nd, 2021, the Court ordered trial of preliminary issue as follows:

Whether the Postema Contract confers an equitable interest in the Lots, 121 acres, from the Property (as described in the schedule below) to the Defendant?

EQUITABLE INTEREST

16. It is the contention of Freshwater that after execution of the Postema Contract, it made the requisite first part payment and thereafter took possession of and began to develop and use the 121 acres of the property, therefore acquiring an equitable and beneficial interest in the land. Freshwater says that Citrus and Cattle therefore held the property on a constructive trust for Freshwater.

17. The Claimant says that the Postema Contract creates only personal rights between the parties to that contract and that no beneficial or equitable interest to the 121 acres can be created or conferred unless the contract is one which is capable of specific performance.

18. Both Claimant and Defendant in written submissions cite as authority, the same passage of Halsbury Laws of England which states:²
“Upon the signing of a contract for the sale of land a change takes place in the equitable, but not the legal, interest in the land. At law the purchaser has no right to the land, nor the vendor to the money, until the conveyance is executed. In equity, however, if the contract is one of which specific performance would be ordered, the beneficial interest passes to the purchaser immediately on the signing of the contract, and thereupon the vendor, in regard to his legal ownership and possession of the land, becomes constructively a trustee for the purchaser.”

19. The issue here is whether the Postema Contract is one in which specific performance would be ordered - and whether the Vendor, Citrus and Cattle held the disputed 121 acres of property on a constructive trust for the purchaser, Freshwater with consequential ramifications in respect of the Claimant.

THE LAW

² Halsbury's Laws of England/Equitable Jurisdiction (Volume 47 (2021))/5. Equity and Property/ (2) Equitable Interests in Property/ (i) Equitable Interests Under Contracts for Sale/215. Purchaser's equitable interest.

20. The case of **Norman Angulo McLiberty v Michael Arnold and Corozal Freezone Development Limited**³ cited by Counsel for the Claimant supports the contention that in Belize, where agreement for sale which requires that land is to be subdivided, such subdivision approval must be obtained prior to entering into the agreement, otherwise the agreement is void ab initio. The decision of Shanks J states that:

“There are two reasons in this case why equity would not have decreed specific performance. The first is that at the time of the contract neither Michael Arnold nor Corozal Free Zone Development Ltd. in fact owned the land since as that stage it had been transferred to Best Lines Ltd. The second and more fundamental reason is that under Section 14 of the Land Utilization Act, it is impossible to sell a parcel of land until subdivision approval has been obtained. Mr. Barrow says here would be no specific performance of this oral contract by Mr. Trummer since the subdivision approval has still not been obtained. In those circumstances Mr. Trummer acquired no beneficial interest in the particular parcel that he was buying and his only rights are to claim money from Mr. Arnold or Mr. Arnold's company.”

21. Section 14 of the Land Utilization Act, Chapter 188 states that *“The applicant shall not sell, lease, give or in any other manner alienate any part of the land which is to be subdivided until he has received the final approval of the Minister thereto.”*

22. In another Belizean case, **Lionel Heredia v. Beatrice Gallego**⁴, the Court’s decision was anchored on the **Norman Angulo McLiberty** case as follows:

“To subdivide, the respondent would have to comply with the provisions of the Land Utilization Act. S:3 (2) specifically directs that, "no person may subdivide any land except in accordance with the provisions [of the Act]." The procedure is that under S:4 the respondent makes application to the Land Subdivision and Utilization Authority which may recommend the subdividing. Under S:14 he is enjoined not to sell, lease, give or in any way alienate any part of the land before he has obtained subdivision in accordance with the Act.

³ Action 290 of 1998

⁴ Action 300 of 2001

The transactions of sale and giving possession, between the applicant and respondent, were proceeded with without compliance with the provisions of the Land Utilization Act. The two purportedly entered into sale agreement evidenced in writing, exhibit LH1, before Lot. 65 was subdivided in accordance with the provisions of the Act. The sale agreement was in breach of SS:3 (2) and 14 of the Act. The sale cannot found a claim to any portion of the land. It cannot create any legal or equitable interest over the land.”

23. Likewise, in the Belizean Supreme Court case of **Southern Environmental Association v Raquel Battle**⁵, Arana J (as she then was) agreed with the Defendant that the contract, subject of the claim, was void ab initio for failure to comply with the requirements of the Land Utilization Act, and pointed to Section 7 of the Act:

“The mischief which the Act was designed to prevent is the very incident which occurred in this case where the parties purported to subdivide property (owned by the Defendant) to be bought by the Claimant without first seeking the permission of the Land Subdivision and Utilization Authority. Section 7 of the Act not only states that such a course of action is illegal, it goes on to spell out the penalty for subdividing land without obtaining the requisite statutory approval:

7 (1) “Any purported subdivision in contravention of the provisions of this Act shall be void and of no effect”

THE EVIDENCE

24. The evidence in this hearing was that no final subdivision approval for the 121 acres was ever obtained. Mr. Postema, for the Claimant conceded the same under cross-examination. He testified that he did not obtain legal advice, and that he relied on the advice of a realtor, Mr. Cullerton in making the purchase of the 121 acres. Mr. Cullerton when cross-examined admitted that he did not obtain legal advice on the sale agreement for the 121 acres, and conceded that although he determined that subdivision approval was needed, final subdivision approval was in fact not

⁵ Claim 147 of 2012 at paragraph 8

obtained, and has never been obtained in respect of the 121 acres which are the subject matter of the Postema Contract.

25. Mr. Postema also conceded that the Postema Contract was not registered, nor was Stamp Duty paid pursuant to the Agreement.

26. The undisputed evidence shows that pursuant to the Postema Contract, Freshwater was sold 121 acres of property, in two distinct parcels of land owned by Citrus and Cattle Limited – an 88.6 acre parcel situate along Freshwater Creek and held under and by virtue of Minister’s Fiat Grant No. 271 of 1992, and an 1248.358 acre parcel situate in the Freshwater Creek area and held under and by virtue of Minister’s Fiat Grant No. 234 of 1989 – and that both parcels of land needed to be subdivided before the sale of the 121 acres pursuant to the Postema Contract could be sold without contravening the Land Utilization Act.

DECISION

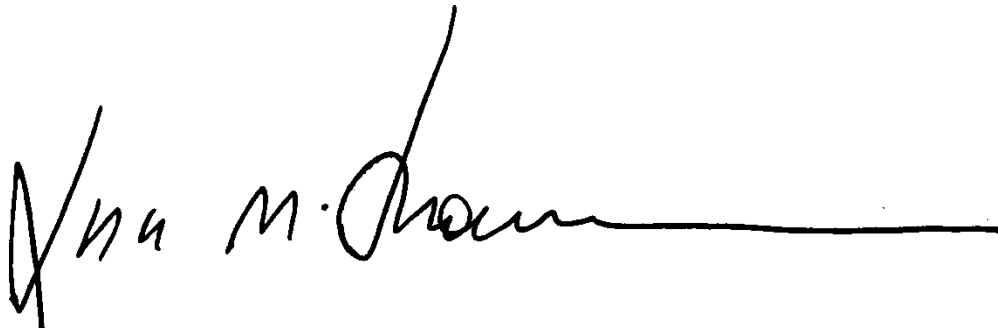
27. The Court has received fulsome submissions on behalf of both parties regarding constructive trust, payment of stamp duty, whether the contract is a conditional contract, proprietary estoppel and whether the contract was otherwise capable of specific performance. I am grateful to Counsel for the same. However, the preliminary issue for decision in this claim is relatively narrow. It does not involve whether the Defendant has a claim, and if so, what relief it may claim against the Claimant pursuant to the Silk Grass Agreement. In my view, it is not necessary to comment on the same, given the conclusion arrived at.

28. When there is a conflict between law and equity, it is the law prevails. Equity can only supplement the law - it cannot supplant the law. Section 7 of the Land

Utilization Act clearly prohibits the sale, lease, gift or any manner of alienation of the land to be subdivided until final subdivision approval is obtained.

29. The Postema Contract is void ab initio because it runs contrary to the provisions of the Land Utilization Act; and consequently is not one which may be specifically enforced, nor can it confer an equitable interest in the disputed 121 acres to the Defendant.

DATED THIS 17th DAY OF FEBRUARY, 2022

A handwritten signature in black ink, appearing to read "Lisa M. Shoman", written over a horizontal line. The signature is cursive and extends across the width of the line.

LISA M. SHOMAN
JUSTICE OF THE SUPREME COURT